

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-120403
		C-120404
Plaintiff-Appellee,	:	TRIAL NOS. B-0904790
		B-1201046
vs.	:	
SEAN MCFADDEN,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Sean McFadden appeals the judgments of the Hamilton County Court of Common Pleas convicting him of aggravated possession of drugs under R.C. 2925.11, a felony of the fifth degree, and revoking community control with respect to a conviction for violating a protective order under R.C. 2919.27, a felony of the third degree.

A police officer saw McFadden staggering in the middle of a street shortly before 3:00 a.m., and the officer decided to cite him for a pedestrian violation. McFadden was unsteady on his feet, and the officer decided to place him into his police cruiser for McFadden's safety. Prior to placing him in the cruiser, the officer asked McFadden if he had any dangerous objects on his person, and McFadden

replied that he did not. But when the officer patted McFadden down for weapons, he found a six-inch knife in his pants pocket. The officer testified that he had then asked for consent to search McFadden's person and that McFadden had assented. During the search, the officer recovered a pill bottle containing Percocet.

After the trial court had denied McFadden's motion to suppress, McFadden entered no-contest pleas to both the possession charge and the community-control violation. The court sentenced him to six months in prison for drug possession and two years in prison for the community-control violation.

In his first assignment of error, McFadden argues that the trial court erred in overruling his motion to suppress

When considering a motion to suppress, the trial court acts as the trier of fact and is in the best position to evaluate the credibility of witnesses and to weigh the evidence. *State v. Sanders*, 1st Dist. No. C-030846, 2004-Ohio-6842, ¶ 6, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. Although we must accept the trial court's findings of fact if they are supported by some competent, credible evidence, we conduct a de novo review of whether the facts meet the applicable legal standard. *Id.*

In this case, the trial court correctly overruled the motion. The officer was justified in placing McFadden in the cruiser to ensure that he did not stumble into traffic and was justified in conducting a pat-down search before placing him in the cruiser. *See State v. Evans*, 67 Ohio St.3d 405, 410, 618 N.E.2d 162 (1993). And the state presented competent, credible evidence that, after the officer had discovered the knife, McFadden had consented to a search of his person. Accordingly, we overrule the first assignment of error.

In his second and final assignment of error, McFadden argues that the trial court erred in imposing terms of imprisonment. He first argues that the court erred in imposing a two-year prison term for the community-control violation. He observes that, under the current sentencing statute, a defendant may be sentenced to a term of nine, 12, 18, 24, 30, or 36 months for a third-degree felony. R.C. 2929.14(A)(3)(b). But because the two-year term was equivalent to a 24-month term, we find no error in the sentence. *See State v. Bromagen*, 1st Dist. No. C-120148, 2012-Ohio-5757, ¶ 14, citing *State v. Shepherd*, 8th Dist. No. 97962, 2012-Ohio-5415, ¶ 85.

Finally, McFadden argues that the court erred in imposing a prison term for the aggravated-possession conviction. He maintains that the trial court did not make the requisite findings for imposing a prison term for a fifth-degree felony. We are not persuaded. The trial court found on the record that McFadden had served a previous prison term, that a prison term was consistent with the purposes and principles of sentencing, and that McFadden was not amenable to community control. *See* R.C. 2929.13(B)(3)(a). Those findings supported the imposition of imprisonment, and we overrule the second assignment of error.

The judgments of the trial court are affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., HILDEBRANDT and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on February 22, 2013

per order of the court _____.
Presiding Judge